IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 23RD OCTOBER 2007 / 1ST KARTHIKA 1929

MFA.No. 1167 of 2000()

OPMV.386/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT/PETITIONER:

K.VENKATESAN,AGED 28,
S/O.C.K.KASI CHETTIAR,THOTTAN THOTTAM,
PALLADAM ROAD, TIRUPUR-4, COIMBATORE DISTRICT.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS/RESPONDENTS:

1.MANAGING DIRECTOR,KERALA STATE ROAD TRANSPORT CORPORATION, TRIVANDRUM.

2.JOHN,S/O.VARGHESE,KUTTUMAKKAL HOUSE, MALIKPARAKARA, PINDIMANA VILLAGE.

BY ADV. SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 23/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1167 OF 2007 ()

Dated this the 23rd day of October, 2007

J U D G M E N T

KOSHY,J.

Appellant claimant at the age of 23, met with an accident and as a result of which he sustained serious injuries when his mini lorry collided with a bus owned by the Kerala State Road Transport Corporation driven by the 2nd respondent. He claimed a total compensation of Rs.4,00,000/-. Tribunal awarded Rs.1,40,250/- inclusive of reimbursement of medical expenses. Tribunal found that accident occurred due to the negligence of the 2nd respondent driver. Only quantum of compensation is disputed in this appeal and hence we are considering the same.

2. Ext.A3 wound certificate issued from the Medical College Hospital, Thrissur shows the following injuries:

1. Lacerated wound of 3 x 2 x 2 cms. anterior aspect (L) knee.

2. Compound fracture both bones (L) leg lower 3rd.

3. Lacerated wound of 2 x 2 cms. medial aspect of left leg lower 3rd.

4. Closed fracture (R) femur.

5. Lacerated wound of 6 x 3 x 3 cms. anterior aspect (L) knee, compound fracture both bones (R) leg lower 3rd.

6. Lacerated wound (R) leg medical aspect extending lower 3rd to ankle region, tenderness and crushed flexor, compartment muscles, lacerated wound (R) temporal region of 5 x 3 x 2 cms."

The medical certificate shows that the petitioner was admitted as inpatient on 26.7.1994 to 7.10.1994 and from 15.11.1994 to 27.1.1995 and was reviewed on 28.3.1995. The diagnosis noted in Ext.A4 series is "multiple injuries, compound fracture right leg, multiple long bone fracture, compound fracture both bones right leg non union malunited fracture right femur corrected - fracture both bones left leg united." Ext.A4 series shows the details of treatment given to him. Ext.A6 is the disability certificate issued by PW2, which shows that there is 40% disability. But according to the Doctor, he may not be

able to drive. Tribunal after seeing the claimant assessed only 25% disability. Considering his profession as a driver and considering the fact that his both legs were affected and considering the treatment records like wound certificate, disability certificate etc., we are of the opinion that compensation ought have been awarded for 40% disability. With regard to the monthly income, he claimed that he was getting Rs.2,500/- per month. Incident occurred on 26.7.1994. He was a professional driver. Tribunal has fixed only Rs.1,500/- as his monthly income. We are of the opinion that Rs.2,000/- can be fixed as the monthly income. Tribunal has taken 17 as the multiplier taking guideline from the 2nd Schedule. Thus compensation payable will be Rs.2,000 x 12 x 17 x $^{40}/_{100}$ =Rs.1,63,200/-. Tribunal has granted only Rs.76,500/- as compensation for disability and loss of earning power. Therefore he will be entitled to an additional amount of Rs.86,700/- for disability and loss of earning power. He was under treatment for six months and with regard to actual earnings, Rs.9,000/- was granted. Since we have increased the monthly income as Rs.2,000/-, he is entitled to an additional

amount of Rs.3,000/- for loss of actual earnings. With regard to all other heads tribunal has granted just and reasonable compensation and hence no enhancement is needed and the additional amount of Rs.89,700/- shall be deposited by the 1st respondent with 7.5% interest from the date of application till its deposit. Since the accident happened more than 10 years ago, on deposit of the above amount appellant is allowed to withdraw the amount. Appeal is accordingly partly allowed.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

prp

J.B.KOSHY & K.HEMA, JJ.

M.F.A.NO.1167 OF 2000 (D)

J U D G M E N T

23rd October, 2007